



State-Based Visas: Unwise, Unworkable, and Constitutionally Dubious

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The libertarian Cato Institute recently hosted an event titled "State Based Visas: A Federalism Approach to the Immigration Impasse", featuring two members of Congress, Sen. Ron Johnson (R-Wisc.) and Rep. Ken Buck (R-Colo.). The lead-in on the webpage has this to say:

The idea of regional or state-based visas is not a new one. Indeed, Canada and Australia have each implemented successful variations that provide some valuable lessons and hint at the major economic benefits possible for us in the United States. Adoption of a state-based visa program in America would permit our 50 state governments to craft rules for work visa programs that are more adaptable to local economic conditions than the present one-size-fits-all system run from Washington, D.C. While state governors and state and federal lawmakers are warming to the idea, all that stands in the way here is congressional approval.

Sounds grand, doesn't it? What you won't find among the paeans to this "federalist" concept are some of the many issues and problems lurking in the bushes surrounding it.

In thinking about the Cato Institute's point of view, it's helpful to know that, although in many ways libertarians are allied with, and sometimes considered to be simply peculiar types of, conservatives, where immigration matters are concerned they hew much more toward an open borders mentality that allies them in immigration matters with many radical progressives. Libertarians may not forthrightly endorse illegal immigration, but as often as not, their cure is broad-based amnesty, along with unfettered access to exceedingly generous "guestworker" programs for employers across the spectrum, from agriculture to construction to information technology, and even to the service industry. After all, if nearly everyone can come, then almost no one is illegal.

Cato is right that this idea of state or regional visa programs has been floated before. For instance, in 2013, the *Boston Globe* published "The case for regional immigration. A bold new proposal: send American newcomers where they're needed". In a similar vein, in 2014 Michigan Governor Rick Snyder floated an idea that, if adopted by Congress, would provide 50,000 work visas for foreigners *for the city of Detroit alone*.

And therein lies the first problem. State governors and legislatures, as a function of their jobs and their interests, focus solely on issues within their respective states and political subdivisions. What governor (or legislature or political party for that matter) wouldn't want the ability to cater

to the powerful interests in the state, thus forever keeping their campaign coffers full? The idea of national interest falls secondary to them, if at all, and were Congress to attempt to devolve its responsibilities onto the states, then it is likely that no one would attend to the overarching national interest as it exists beyond their narrow geographic boundaries. It is not that our federal legislators are not also subject to such interests or pressures, but at least in a national setting they are obliged to negotiate and counterbalance one another.

Multiply the 50,000 in Detroit by the number of states, cities, and even small towns that would lobby for such programs, and one can readily see the American labor market flooded with alien laborers willing to work for less and less, thus depressing wages nationally in any sector of the economy in which they became prevalent. American workers already face such situations with the H-1 and H-2 visa programs. We could multiply such abuse many times over, to the deficit of American workers, were regional visa giveaway schemes to be adopted.

Such schemes also do little to resolve the lingering problems of un- and under-employment, especially among those at the bottom of the economic ladder, a fact noted by Rev. Horace Sheffield III who, in response to the Michigan governor's proposal, told CNS News that even if it does not take a specific job away from native-born job-seekers, it makes immigrants "more marketable than educated current residents. ... What does that do to displace people who are born here and who don't have the education and are already competing for scarce jobs?"

In addition, the question of widespread corruption raises its ugly head. In the case of Michigan, the governor (using factoids from dubious studies) was speaking specifically about modifying and using one of the EB visa investor programs. Other programs, using the EB-5 investor visa, are already run by various consortiums in certain states, and are pushed mightily by private middlemen with favored investment schemes in which they have fiduciary interests. The result has been a shocking series of scandals and ripoffs all over the country, including South Dakota, Vermont, and California, among other places. The fraud has been so rampant that my colleagues here at the Center have created an interactive map of places in the United States affected by program abuses.

The scandals have resulted in lawsuits, criminal prosecutions, and frequent enforcement actions by the Securities and Exchange Commission, which has taken a responsible attitude toward attempting to curb the corrupt practices by stepping into the vacuum left by inactivity at the agency responsible for overseeing EB visa approvals: U.S. Citizenship and Immigration Services (USCIS), a subordinate agency in the Department of Homeland Security (DHS). Even when the EB-5-related projects have not been overtly corrupt, the regions in which they operate, which are supposed to be created in economically depressed zones, have been gerrymandered out of recognition and have a depressing pay-to-play look and feel to them.

There is little reason to think that the state- or regional-system(s) urged by the Cato Institute would be run any better or more honestly than the cornucopia of malfeasance that has attended investor visa programs. They are more likely simply a foreshadowing of what we could expect from visa schemes devolved to states or their political subdivisions.

Nor is it simply a matter of poor management and rip-offs of rich foreigners that has gone by the wayside. So have national security and public safety; ironic in that it is a DHS agency overseeing the current abysmal sham of a program. In a recent case in California, the couple running the scheme managed to get Chinese criminals fleeing from justice approved to come to the United

States. The FBI raids that resulted in disruption of the scheme and several arrests led to a telling op-ed in a Vermont publication, *The Green Mountain Daily*: "Is California's new EB-5 scandal more scandalous than ours?".

But we must look beyond the niche investor visa programs for the rich, because it's safe to assume that not all such state- or regionally based programs, were they to occur, would be based on investor visas. Indeed that is one of the premises of the Cato Institute's presentation, whose moderator, immigration policy analyst David Bier, in his opening remarks asks "whether the federal government should maintain its near-complete monopoly over legal immigration."

Although Mr. Bier poses this question in the context of the libertarian advocacy of "individual liberties" for both Americans and aliens seeking entry to work, it seems to me that the reality is significantly different. Outside of investor visa programs that give green cards to the ultra-rich in return for their cash "investments" in America, the aliens recruited to work in state or regional ventures would, for all intents and purposes, be the modern-day equivalent of indentured servants for any other temporary visa category. How could they not be?

After all, what good would it do to create a program in which a state — say, Michigan — places thousands of alien workers in a city of crumbling infrastructure, hoping to turn it around, only to permit them to leave for greener pastures elsewhere in the country when they arrived and saw what they had gotten into? And if they did so, in violation of the terms and conditions of the program, whatever it might be, who would be expected to clean up the mess, find the aliens, and deport them? The states they had fled from? They have neither the power nor constitutional authority. So at that point, the states or their subdivisions would most assuredly hand the mess over to the federal government and say, "not my problem any more," leaving it to taxpayers nationally to cover the cost of their ill-thought-out schemes.

The corollary to this arrive-and-run scenario in which aliens leave before their period of "indenture" is up, of course, is that the states and regions would then demand to re-fill the now-vacated jobs, thus creating an endless slot system of escalating numbers of even more aliens, both legal and illegal ("illegal" in this case meaning those who violate the condition of their entry by leaving the assigned program), flooding the country.

Finally, let us return to the question of "whether the federal government should maintain its near-complete monopoly over legal immigration": I thought that question was resolved in 1789 when our founders brought the Constitution into force, specifying in Article I, Section 8, Clause 4, that "The Congress shall have Power To ... establish an uniform Rule of Naturalization," which has repeatedly been construed by the Supreme Court to include immigration generally.

Immigration is one of the few powers assigned singularly and exclusively to the federal government, owing in no small part to recognition on the part of our forefathers that any other system of maintaining sovereignty and border control was unworkable. They had, after all, already seen the Articles of Confederation fail abjectly in no small measure because too much control had been left to the states, each of which then felt free to go their own way with little or no regard to one another or the commonweal of all of the citizenry.

Perhaps the collateral question is this: Can Congress give its powers over immigration away to the states? Surely the answer is "No," as certainly as it would be were the question: Can Congress give away to the states the power over the federal purse, or the power to coin money?

But however constitutionalists might argue it, the answer most assuredly *should* be a resounding no.